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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Closed Captioning and Video Description)
of Video Programming)

Implementation of Section 305 of the)
Telecommunications Act of 1996)

Video Programming Accessibility)

MM Docket No. 95-176

To: The Commission

**OPPOSITION OF TELEMUNDO GROUP, INC. TO THE
JOINT PETITION FOR RECONSIDERATION OF
THE CONSUMER ACTION NETWORK AND
THE NATIONAL ASSOCIATION OF THE DEAF**

Telemundo Group, Inc. ("Telemundo"), by its attorneys and pursuant to Section 1.429 of the Commission's rules, hereby submits this Opposition to the joint Petition for Reconsideration filed by the Consumer Action Network ("CAN") and the National Association of the Deaf ("NAD") (the "Joint Petition") challenging the Commission's *Order* in the above-captioned proceeding. 1/

1/ *Closed Captioning and Video Description of Video Programming, Report and Order*, MM Docket 95-176, FCC 97-279 (released Aug. 22, 1997) (the "*Order*"). The Commission instituted this proceeding in response to the statutory directive of the Telecommunications Act of 1996 (the "*Telecom Act*"). See *Closed Captioning and Video Description of Video Programming, Notice of Proposed Rulemaking*, FCC 97-4 (released Jan. 17, 1997) (the "*Notice*"). In response to the *Notice*, Telemundo submitted comments highlighting issues of particular concern to foreign language programmers for the Commission ("*Telemundo Comments*").

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In the *Order*, the Commission chose to exempt from captioning requirements all foreign language programming that could not be captioned through the ENR technique. ^{2/} Given the scarcity of foreign language captioners, as well as the fact that many foreign programming producers choose not to caption their programming, U.S. foreign language program distributors would be burdened disproportionately by mandatory captioning requirements. Telemundo -- and other foreign language programmers -- already must recover the higher costs associated with foreign language programming from a much smaller potential audience than that available to English language programmers. Thus, the Commission's decision to exempt foreign language programming from captioning requirements is critical to preserving Telemundo's ability to serve an expanding, but yet underserved, U.S. Hispanic population.

I. THE *ORDER* PROPERLY EXEMPTED FOREIGN LANGUAGE PROGRAMMING FROM GENERAL CAPTIONING REQUIREMENTS.

The text of Section 305 explicitly permits exemptions for programming in cases where captioning would be "economically burdensome to the provider or owner of such programming." ^{3/} Although the statute does not define what constitutes a burden, both the statute and the legislative history of this section underscore that any

^{2/} See, e.g., *Order* at ¶ 147.

^{3/} See 47 U.S.C. § 613.

consideration of the burden imposed by captioning should be viewed in the context of the particular type of programmer or programming. ^{4/}

In light of this congressional directive, the Commission responded to the unique difficulties posed by the Spanish language captioning market by exempting Spanish language programmers from general captioning requirements. Although the Commission noted the importance of captioning Spanish language programming when possible, it was unwilling to force Spanish language programmers to caption their programming in light of the scarcity of Spanish language captioners, particularly stenocaptioners, ^{5/} and the dependence of U.S. Spanish language programmers on foreign produced programming, which is outside the Commission's jurisdiction and generally not captioned.

II. THE JOINT PETITION DOES NOT GIVE ANY REASON FOR THE COMMISSION TO CHANGE ITS DECISION TO EXEMPT FOREIGN LANGUAGE PROGRAMMING FROM CAPTIONING REQUIREMENTS.

The Joint Petition is the only petition to question the Commission's decision to exempt foreign language programming. But the petition offers no reason for the Commission to undo the *Order's* final resolution of the issue. In fact, the Joint Petition bases its claim that Spanish language captioning should be required on the proposal of a single Spanish language programmer to undertake some captioning

^{4/} See, e.g., Telemundo Comments at 3; H.R. REP. No. 204, 104th Cong., 1st Sess. 115 (1995).

^{5/} See *Order* at ¶¶ 100, 147.

voluntarily and to consider some captioning requirements in the future. 6/ The Joint Petition, however, fails to acknowledge the crucial difference between a largely voluntary captioning regime and a regime that requires captioning of *all* programming. For instance, Telemundo, with the help of private organizations, already captions its national news coverage. 7/ Although Telemundo would like to extend its captioning to other programming voluntarily, it is not currently economically feasible to do so.

Joint Petitioners attempt to negate the argument that most foreign language programming comes to the United States uncaptioned by pointing out that PBS captions Masterpiece Theatre, an English language program produced in England. Joint Petitioners' claim that Telemundo can "arrange contracts for captioning of shows brought . . . from foreign countries" ignores the evidence accumulated in this proceeding, including the Commission's conclusion that "the personnel and the facilities necessary to caption languages other than English are extremely limited." 8/ Moreover, that PBS obtains a grant to caption a single, foreign produced series (which is not even in a foreign language) does not have any bearing on the ability of foreign

6/ See Joint Petition at 12. The Joint Petition also claims that this programmer did not request an exemption, but only a longer phase-in period for captioning requirements on Spanish language programming. See *id.* at 12. Such a claim is inaccurate, as that programmer also requested a permanent exemption for *all foreign produced programming*, which constitutes a significant portion of the programming of any Spanish language network. See Univision Comments at 5.

7/ Specifically, as noted in its Comments, Telemundo captions its two half-hour newscasts on weekdays, for a total of five hours per week.

8/ See Order at ¶ 147.

language programmers -- like Telemundo -- to caption foreign produced programming that comprises the majority of their program schedule. Most important, the Joint Petition's arguments ignore the disparate burden that such a requirement would impose on Spanish language programmers who would be independently responsible for captioning a significant segment of their programming (obtained from overseas producers whose home countries have no captioning requirements), as opposed to English language programmers who can expect that U.S. producers will, as a matter of course, caption their programming during its production. 9/ The Joint Petition's attempt to compare the burden that mandatory captioning would impose on Telemundo, with its complete schedule of Spanish speaking programming, versus the minimal burden encountered by the captioning of a few non-U.S. produced series on other networks demonstrates that the Joint Petitioners' fundamental lack of understanding of the hurdles that must be overcome by programmers such as Telemundo to caption their programming. 10/

9/ Such an inequitable captioning burden would only add to the higher costs and disparately low revenues associated with Spanish language programming. For example, as noted in Telemundo's Comments, Spanish language television had an aggregate audience share of 4 percent in 1995, but received only 1.7 percent of advertising revenue during that year.

10/ In addition, the Joint Petition's claim that Spanish language programming is no more costly than that of English language programming is unsupported in the record. See *Order* at ¶ 98 (citing, among other, the comments of Captivision, a captioning service). Moreover, although the equipment used in captioning Spanish language programming may be the same as that used for English language programming, the comparative scarcity of Spanish language captioners ensures that Spanish language captioning will almost certainly cost more than English language captioning.

III. CONCLUSION

In light of the foregoing, Telemundo urges the Commission to retain the exemption granted to foreign language programmers from mandatory captioning at this time.

Respectfully submitted,

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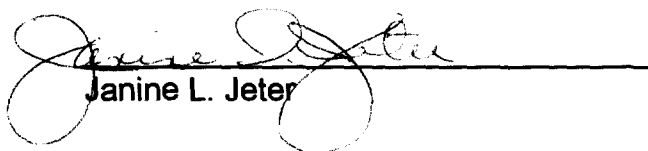
November 20, 1997

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Opposition of Telemundo Group, Inc. to the Joint Petition for Reconsideration of the Consumer Action Network and the National Association of the Deaf were mailed, postage prepaid this 20th day of November, 1997 to:

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